WEST VIRGINIA CODE: §16B-4-15

§16B-4-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever establishes, maintains, or is engaged in establishing or maintaining a nursing home without a license granted under §16B-4-6 of this code, or who prevents, interferes with or impedes in any way the lawful enforcement of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100, or by confinement in jail for a period of not more than 90 days, or by both fine and confinement, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with confinement in jail for a period of not more than 90 days, or by both fine and confinement, at the discretion of the court. Each day of a continuing violation after conviction is considered a separate offense.

(b) The director, in consultation with the Inspector General, may in his or her discretion bring an action to enforce compliance with this article or any rule or order hereunder whenever it appears to the director, in consultation with the Inspector General, that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the director, in consultation with the Inspector General, that any person has aided, abetted or caused, or is aiding, abetting, or causing, such an act or practice. Upon application by the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring, or if emergency circumstances occur the Circuit Court of Kanawha County, has jurisdiction to grant without bond a permanent or temporary injunction, decree, or restraining order.

Whenever the director, in consultation with the Inspector General, has refused to grant or renew a license, or has revoked a license required by law to operate or conduct a nursing home, or has ordered a person to refrain from conduct violating the rules of the Inspector General, and the person has appealed the action of the director, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the nursing home or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the nursing home. Should a person who is refused a license or the renewal of a license to operate or conduct a nursing home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the Inspector General fails to appeal or should the appeal be decided favorably to the Inspector General, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a nursing home without a license as required by law, or has continued to violate the rules of the Inspector General.

(c) Any nursing home that deprives a resident of any right or benefit created or established for the well-being of this resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of such deprivation,

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and unless there is a finding that the nursing home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for such injury. In addition, where the deprivation of the right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies is not required prior to commencement of suit under this subsection.

(d) The amount of damages recovered by a resident, in an action brought pursuant to this section, is exempt for purposes of determining initial or continuing eligibility for medical assistance under §9-5-1 *et seq.* of this code, and may neither be taken into consideration, nor required to be applied toward the payment or part payment of the cost of medical care or services available under that article.

(e) Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, is void as contrary to public policy.

(f) The penalties and remedies provided in this section are cumulative and are in addition to all other penalties and remedies provided by law.

(g) Nothing in this section or any other section of the code shall limit the protections afforded nursing homes or their health care providers under §55-7b-1 *et seq*. of this code. Nursing homes and their health care providers shall be treated in the same manner as any other health care facility or health care provider under §55-7b-1 *et seq*. of this code. The terms "health care facility" and "health care provider" as used in this subsection shall have the same meaning as set forth in §55-7b-2(f) and (g) of this code.

(h) The proper construction of this section and the limitations and provisions of §55-7b-1 *et seq.* of this code shall be determined by principles of statutory construction.

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